

Award No. 3034

Docket No. CL-2988

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

Yard Clerk, Mr. D. A. Waters, Wilkes-Barre, Pa., be paid the difference between \$139.70 (Clerical Rate) and \$251.60 (Assistant Yardmaster's Rate) from July 1, 1941 to December 22, 1942, account of Assistant Yardmaster's position discontinued and the Clerk required to assume the duties and responsibilities of the Assistant Yardmaster's position.

EMPLOYES' STATEMENT OF FACTS: "Prior to July 1, 1941, the Carrier discontinued the position of Assistant Yardmaster at Wilkes-Barre, Pa., hours 4:00 P.M. to 12:00 Midnight. The remaining Yardmasters' force consisted of one (1) Yardmaster, hours 8:00 A.M. to 6:00 P.M. and one (1) Assistant Yardmaster, hours 11:00 P.M. to 8:00 A.M. The Yard Clerk working from 4:00 P.M. to 12:00 Midnight was required to assume the duties and responsibilities of Yardmaster between 6:00 P.M. and 11:00 P.M. account of the position being discontinued.

The Yardmaster work which is the basis of this claim is described and stipulated to be as follows:

1. Instructing Yard Crews in the switching operations to be performed.
2. Instructing Road Crews in the yarding of trains and the movement of trains out of the yard.
3. Instructing Crews checking and recording cars moving into and out of Industrial Plants.
4. Instructing Foreign Line Crews and Yard Crews in placing and yarding interchange cars moving into and out of yard from and to—D. & H.; P. R. R.; C. R. R. of N. J.; and L. & W. V., Railroads, which interchanges are made during the hours of 6:00 P.M. and Midnight, in order to eliminate Per Diem charges.
5. Report to and receive instructions from the Chief Dispatcher.
6. Required to assume and perform the same authority and responsibility as the Yardmasters' in the territory assigned to them.

The duties and responsibilities of Yardmaster work performed by the Yard Clerk had increased to such extent that the Committee was instructed to secure additional help; however, the Superintendent refused to supply any

of the assistant yardmaster was whether we could, during the continuance of the light business, get along without supervision of the yard crews by an assistant yardmaster, and whether, without this supervision, the yard foremen could work efficiently. Wilkes-Barre is not a main or classification yard, but the work there comprises freight house and team track switching, delivery and receipt of cars in interchange with three roads, all of which work is routine and, in general, can be laid out by the agent and the yardmaster before they go off duty.

With the improved condition in the country, we enjoyed a gradual increase in business for 1938, 1939, 1940, 1941 and 1942, and in December, 1942, we restored the position of assistant yardmaster, and the business continuing heavy, he is still in service.

The duties of yardmasters, as outlined in the rules for the Government of the Operating Department are as follows:

"GENERAL YARD MASTERS

"1011. General Yardmasters report to and receive instructions from the Trainmaster."

"1012. They will have charge of the yards, the men employed therein, the movement of trains and engines and the distribution and movement of cars within their assigned territory. They will have supervision of road train crews within yard limits."

"1013. They will see that yard and train crews and engines are ready for duty at the appointed time; that trains are properly made up, inspected and dispatched at the designated time, and that conductors of outgoing trains are furnished with waybills for all cars in their trains."

"1014. They must see that cars in need of repairs are promptly placed; that waybills are received for all cars arriving; that cars do not meet with unnecessary delay, and that records and reports are made in accordance with instructions."

"1015. They will supervise the handling of cars in yards, see that they are not roughly handled, that commodities requiring special handling are protected, and that special regulations and rules covering, are complied with."

"1016. Assistant General Yardmasters, Yardmasters and Assistant Yardmasters have the same authority and responsibility as a General Yardmaster in the territory assigned them."

It will be noted that yardmasters' duties are generally supervisory, but, of course, it is understood in carrying on their work, they do some clerical work, and none of the duties enumerated for yardmasters were placed upon this clerk, nor did he assume the responsibilities or the work of a yardmaster.

Attention is called to your Awards 2133 and 2134 covering a similar question on this road at Packerton and Manchester, main classification yards, where at about the same time, on account of light business, re-arrangement of the force of yardmasters was made, in which the claims of the Clerks were denied. We call attention, also, to decisions of the Fourth Division in similar cases, and their awards numbered 191 and 253.

In view of the fact that there was no violation of the Clerks' Agreement, and the re-arrangement of forces was made on account of the small volume of business not requiring normal supervising force and the position restored when business returned to normal volume, we ask that the claim be denied.

OPINION OF BOARD: To sustain the claim herein, Organization must show that Clerk Waters performed some of the duties of Assistant Yardmaster. This is a question of fact and is sharply controverted in the record.

The claims of both sides are fully set forth and no useful purpose will be served in a lengthy discussion of the evidence. Suffice it to say, that two affidavits were presented by Organization signed by trainmen and yard foremen stating generally that in the absence of a Yardmaster necessary instructions were issued by Clerk Waters, such instructions being made to fit the conditions and requirements at the time issued. Opposed to these were eight affidavits submitted by Carrier signed by trainmasters, yardmasters, and foremen of yard crews, which tend to support Carrier's claim that Waters did not perform any of the duties of Yardmaster. True, three of these affidavits had reference to the period immediately preceding the commencement of the claim herein and one did not refer to any specific period of time. Moreover, it is pointed out in behalf of Organization that certain statements in Soley's affidavit, submitted by Carrier, indicate that Waters did perform some of the Yardmaster's duties. This contention has considerable merit if the statements are considered separate from their context. However, if the affidavit is considered as a whole, together with other pertinent affidavits and the entire record, Organization's proof falls short. In addition to the fact that the issue is in sharp conflict as will be seen by these affidavits, proof in behalf of employe is general and lacks sufficient definiteness and particularity to justify a holding that Waters actually performed some of the duties of Assistant Yardmaster. The claim must therefore be denied for lack of proof.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Organization failed to present sufficient proof that Yard Clerk Waters performed some of the duties of Assistant Yardmaster.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 14th day of December, 1945.